

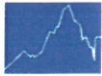
February 27, 2018
Board Room 4
10:00 a.m.

Agenda

Board of Health Professions

Full Board Meeting

▪ Call to Order	Dr. Clayton-Jeter
▪ Emergency Egress	Dr. Carter
▪ Public Comment	Dr. Clayton-Jeter
▪ New Board Member Appointment <ul style="list-style-type: none">▪ Lisette Carbajal, MPA, Citizen Member▪ Maribel Ramos, Citizen Member	
▪ Reappointment <ul style="list-style-type: none">▪ Mark Johnson, DVM, Board of Veterinary Medicine▪ Derrick Kendall, NHA, Board of Long-Term Care▪ Herbert Stewart, PhD, Board of Psychology	
▪ Approval of Minutes <ul style="list-style-type: none">▪ December 7, 2017 - Revised	Dr. Clayton-Jeter
▪ Director's Report	Dr. Brown
▪ Legislative and Regulatory Report	Ms. Yeatts
▪ Health Practitioners Monitoring Program (HPMP)	Ms. Wood
▪ Board Chair Report	Dr. Clayton-Jeter
▪ Executive Director's Report <ul style="list-style-type: none">▪ Board Budget▪ Agency Performance▪ Sanction Reference Point (SRP) Update▪ Policy & Procedures Update	Dr. Carter
▪ Practitioner Self-Referral - page <ul style="list-style-type: none">▪ Procreate Fertility Center of Virginia, PLLC	Ms. Haynes
▪ Regulatory Research Committee <ul style="list-style-type: none">▪ Art Therapy Study	Mr. Wells
▪ Healthcare Workforce Data Center <ul style="list-style-type: none">▪ Update	Dr. Shobo
▪ Criminal Background Checks	Dr. Doyle
▪ Individual Board Reports	Dr. Clayton-Jeter
▪ New Business	Dr. Clayton-Jeter
▪ Next Full Board Meeting <ul style="list-style-type: none">▪ June 26, 2018	Dr. Clayton-Jeter
▪ Adjournment	



Board of Health Professions Full Board Meeting

December 7, 2017

10:00 a.m. - Board Room 4

9960 Mayland Dr, Henrico, VA 23233

In Attendance

Barbara Allison-Bryan, MD, Board of Medicine
Helene D. Clayton-Jeter, OD, Board of Optometry
Kevin Doyle, EdD, LPC, LSATP, Board of Counseling
Yvonne Haynes, LCSW, Board of Social Work
Mark Johnson, DVM, Board of Veterinary Medicine
Allen R. Jones, Jr., DPT, PT, Board of Physical Therapy
Derrick Kendall, NHA, Board of Long-Term Care Administrators
Ryan Logan, RPh, Board of Pharmacy
Martha S. Perry, MS, Citizen Member
Herb Stewart, PhD, Board of Psychology
Laura P. Verdun, MA, CCC-SLP, Board of Audiology & Speech-Language Pathology
James D. Watkins, DDS, Board of Dentistry
James Wells, RPh, Citizen Member
Junius Williams, Jr., MA, Board of Funeral Directors and Embalmers

Absent

Marvin Figueroa, Citizen Member
Trula E. Minton, MS, RN, Board of Nursing
Jacquelyn M. Tyler, RN, Citizen Member

DHP Staff

David Brown, DC, Director DHP
Elizabeth A. Carter, Ph.D., Executive Director BHP
Lisa R. Hahn, MPA, Chief Operating Officer DHP
Jaime Hoyle, Executive Director Behavioral Sciences Boards
Laura L. Jackson, BHSA, Operations Manager BHP
Leslie Knachel, Executive Director for the Boards of Audiology & Speech Language Pathology, Optometry and Veterinary Medicine
Diane Powers, Communications Director DHP
Michelle Schmitz, Enforcement Director DHP
Yetty Shobo, PhD, Deputy Executive Director BHP
Matt Treacy, Communications Associate DHP
Elaine Yeatts, Senior Policy Analyst DHP

Presenters

Yetty Shobo, PhD, Deputy Executive Direct BHP



Michelle Schmitz, Enforcement Director DHP

Speakers

No speakers signed-in

Observers

W. Scott Johnson, Medical Society of Virginia

Ryan LaMura, Virginia Hospital and Healthcare Association

Emergency Egress Dr. Carter

Call to Order

Chair: Dr. Clayton-Jeter **Time** 10:03 a.m.

Quorum Established

Public Comment

Discussion

There was no public comment

Approval of Minutes

Presenter Dr. Clayton-Jeter

Discussion

The August 31, 2017 Full Board meeting minutes were approved with no revisions. All members in favor, none opposed.

Directors Report

Presenter Dr. Brown

Discussion

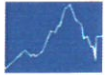
Dr. Brown reported that Secretary Hazel has not requested reappointment and is ready to leave his post after service in two administrations. Dr. Brown did state however that he himself is seeing reappointment to DHP. An overview of the 2017 curricula pain management committee has submitted its report findings to the Governor. Dr. Brown announced that Ms. Hahn is the new agency COO. He stated that the COO position was created to aid in the continuity of agency operations.

Election of Officers - Nominating Committee

Presenter Ms. Haynes, Chair

Discussion

The Nominating Committee met prior to the Full Board meeting to organize a slate of officers for today's Chair and Vice Chair elections. Ms. Haynes stated that Dr. Clayton-Jeter, Dr. Allen Jones, Jr. and Dr. Allison-Bryan submitted their interest in the Chair and Vice Chair positions with the Board of Health Professions. After brief discussion, Ms. Haynes opened nominations from the floor. There were no additional nominations made. Dr. Allison-Bryan withdrew from consideration.



Vote: All members were in favor of reappointment of Dr. Clayton-Jeter as Board Chair and reappointment of Dr. Allen Jones, Jr. as Vice Chair.

Legislative and Regulatory Report

Presenter Ms. Yeatts

Discussion

Ms. Yeatts advised the Board of updates to the laws and regulations that affect DHP currently in the General Assembly.

Enforcement

Presenter Ms. Schmitz

Discussion

Ms. Schmitz provided the Board with a very informative update on the Enforcement Division. Highlights included the new ability to report a complaint online, improvements to the subpoena process, and requests for DHP Enforcement training from the DEA and FBI.

Communications Report

Presenter Dr. Clayton-Jeter

Discussion

Dr. Clayton-Jeter presented the new DHP logo to the Board by way of a PowerPoint presentation. She provided information regarding the process of the logo creation, the design direction and the meaning behind the logo. She stated her enjoyment in working with the VCU design team and DHPs stakeholder group. Dr. Allison-Bryan was also a member of the stakeholder group and voiced her appreciation of the process and the finished product.

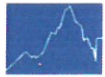
Ms. Powers added that DHP will be increasing its brand identity and will be purchasing lanyards, pens and phone screen wipes with the new logo.

Board Chair Report

Presenter Dr. Clayton-Jeter

Discussion

Dr. Clayton-Jeter discussed that this is a new agenda item allowing the Chair the opportunity to discuss items relevant to the functions of the Board. She provided an Employee Fact Sheet that was sent to Federal employees providing information on preventing opioid misuse. She believes this form of relaying information may be helpful at the state level as well.



Executive Directors Report

Presenter Dr. Carter

Board Budget

Dr. Carter stated that the Board is operating under budget.

Agency Performance

Dr. Carter reviewed the agencies performance measures in relation to clearance rate, age of pending caseload and time to disposition.

Sanction Reference Points (SRP) - Update

Four boards are updating their SRP manuals. Dr. Carter also expressed that several boards have been asking about training. A request has been made for Communications to assist by recording a training video that can be used internally and posted on the DHP webpage. Additional in-person training will also be provided upon Board request.

Policies & Procedures

Dr. Carter has requested the assistance of the Regulatory Research Committee in updating the sunrise review policies and procedures. She will be providing a review of methods employed in other states as part of the review process. The Board supported the idea.

Regulatory Research Committee

Presenter Mr. Wells

Mr. Wells provided information regarding the Committee's approval to move forward with the sunrise review request made by the Virginia Art Therapy Association. The Committee approved the proposed workplan presented by Ms. Jackson.

Healthcare Workforce Data Center (DHP HWDC)

Presenter Dr. Shobo

Discussion

Dr. Shobo provided a PowerPoint presentation that she presented at the annual Southern Demographics Association meeting that utilized DHP licensure data. She also advised the Board that DHP HWDC is up to date on all survey reports and posting of the workforce briefs and is in the process of collecting the survey data from December license renewals.

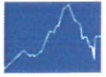
Lunch break 11:53 a.m. – 1:15 p.m.

Board Reports

Presenter Dr. Clayton-Jeter

Board of Audiology & Speech Language Pathology

Ms. Verdun provided an overview of the Boards activity since its last meeting. (Attachment 1)



Board of Counseling

Dr. Doyle provided an overview of the Boards activities since its last meeting. (Attachment 2)

Board of Dentistry

Dr. Watkins provided an overview of the Boards activities since its last meeting. (Attachment 3)

Board of Funeral Directors & Embalmers

Mr. Williams provided an overview of the Boards activities since its last meeting (Attachment 4)

Board of Long Term Care Administrators

Mr. Kendall provided an overview of the Boards activities since its last meeting. (Attachment 5)

Board of Medicine

Dr. Allison Bryan provided an overview of the Boards activities since its last meeting. (Attachment 6)

Board of Nursing

Ms. Minton was not in attendance at this meeting. There was no report.

Board of Optometry

Dr. Clayton-Jeter provided an overview of the Boards activities since its last meeting. (Attachment 7)

Board of Pharmacy

Mr. Logan provided an overview of the Boards activities since its last meeting. (Attachment 8)

Board of Physical Therapy

Dr. Jones, Jr. provided an overview of the Boards activities since its last meeting. (Attachment 9)

Board of Psychology

Dr. Stewart provided an overview of the Boards activities since its last meeting. (Attachment 10)

Board of Social Work

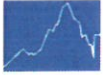
Ms. Haynes provided an overview of the Boards activities since its last meeting. (Attachment 11)

Board of Veterinary Medicine

Dr. Johnson provided an overview of the Boards activities since its last meeting. (Attachment 12)

New Business

Presenter Dr. Clayton-Jeter



No new business was discussed.

February 27, 2018 Full Board Meeting

Presenter Dr. Clayton-Jeter

Dr. Clayton-Jeter announced the next Full Board meeting date as February 27, 2018.

Adjourned

Adjourned 12:47 p.m.

Chair Helene Clayton-Jeter, OD

Signature: _____ Date: ____/____/____

**Board Executive
Director** Elizabeth A. Carter, Ph.D.

Signature: _____ Date: ____/____/____

Virginia Department of Health Professions
Revenue and Expenditures Summary
Department 30900 - Board of Health Professions
For the Period Beginning July 1, 2017 and Ending January 31, 2018

Account Number	Account Description	Amount	Budget	Amount Under/(Over) Budget	% of Budget
4002400	Fee Revenue				
4002401	Application Fee	500.00	-	(500.00)	0.00%
	Total Fee Revenue	500.00	-	(500.00)	0.00%
	Total Revenue	500.00	-	(500.00)	0.00%
5011110	Employer Retirement Contrib.	18,551.79	32,626.00	14,074.21	56.86%
5011120	Fed Old-Age Ins- Sal St Emp	11,625.46	18,502.00	6,876.54	62.83%
5011130	Fed Old-Age Ins- Wage Earners	873.41	6,682.00	5,808.59	13.07%
5011140	Group Insurance	1,973.40	3,169.00	1,195.60	62.27%
5011150	Medical/Hospitalization Ins.	4,833.50	7,776.00	2,942.50	62.16%
5011160	Retiree Medical/Hospitalizatn	1,777.56	2,854.00	1,076.44	62.28%
5011170	Long term Disability Ins	994.26	1,597.00	602.74	62.26%
	Total Employee Benefits	40,629.38	73,206.00	32,576.62	55.50%
5011200	Salaries				
5011230	Salaries, Classified	150,934.70	241,849.00	90,914.30	62.41%
5011250	Salaries, Overtime	500.94	-	(500.94)	0.00%
	Total Salaries	151,435.64	241,849.00	90,413.36	62.62%
5011300	Special Payments				
5011340	Specified Per Diem Payment	1,200.00	4,350.00	3,150.00	27.59%
5011380	Deferred Compnstrn Match Pmts	750.00	1,440.00	690.00	52.08%
	Total Special Payments	1,950.00	5,790.00	3,840.00	33.68%
5011400	Wages				
5011410	Wages, General	11,417.13	87,339.00	75,921.87	13.07%
	Total Wages	11,417.13	87,339.00	75,921.87	13.07%
5011600	Terminatn Personal Svce Costs				
5011660	Defined Contribution Match - Hy	1,769.55	-	(1,769.55)	0.00%
	Total Terminatn Personal Svce Costs	1,769.55	-	(1,769.55)	0.00%
5011930	Turnover/Vacancy Benefits		-	-	0.00%
	Total Personal Services	207,201.70	408,184.00	200,982.30	50.76%
5012000	Contractual Svcs				
5012100	Communication Services		-		
5012110	Express Services	-	50.00	50.00	0.00%
5012140	Postal Services	37.44	500.00	462.56	7.49%
5012160	Telecommunications Svcs (VITA)	794.33	2,800.00	2,005.67	28.37%
5012170	Telecomm. Svcs (Non-State)	337.50	-	(337.50)	0.00%
5012190	Inbound Freight Services	10.28	20.00	9.72	51.40%
	Total Communication Services	1,179.55	3,370.00	2,190.45	35.00%
5012200	Employee Development Services				
5012210	Organization Memberships	-	200.00	200.00	0.00%
5012220	Publication Subscriptions	-	50.00	50.00	0.00%
5012240	Employee Training/Workshop/Conf	857.50	3,500.00	2,642.50	24.50%
5012250	Employee Tuition Reimbursement	2,421.00	-	(2,421.00)	0.00%
	Total Employee Development Services	3,278.50	3,750.00	471.50	87.43%

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				Budget	
5012400	Mgmnt and Informational Svcs				
5012470	Legal Services	775.60	1,200.00	424.40	64.63%
5012480	Media Services	-	200.00	200.00	0.00%
	Total Mgmnt and Informational Svcs	775.60	1,400.00	624.40	55.40%
5012600	Support Services				
5012630	Clerical Services	-	600.00	600.00	0.00%
5012640	Food & Dietary Services	493.80	750.00	256.20	65.84%
5012660	Manual Labor Services	1.68	50.00	48.32	3.36%
5012670	Production Services	9.90	20.00	10.10	49.50%
5012680	Skilled Services	58,955.00	94,993.00	36,038.00	62.06%
	Total Support Services	59,460.38	96,413.00	36,952.62	61.67%
5012700	Technical Services				
5012780	VITA InT Int Cost Goods&Svs	381.91	-	(381.91)	0.00%
	Total Technical Services	381.91	-	(381.91)	0.00%
5012800	Transportation Services				
5012820	Travel, Personal Vehicle	3,761.63	3,845.00	83.37	97.83%
5012830	Travel, Public Carriers	471.70	670.00	198.30	70.40%
5012850	Travel, Subsistence & Lodging	1,591.84	1,100.00	(491.84)	144.71%
5012880	Trvl, Meal Reimb- Not Rprtble	950.75	550.00	(400.75)	172.86%
	Total Transportation Services	6,775.92	6,165.00	(610.92)	109.91%
	Total Contractual Svcs	71,851.86	111,098.00	39,246.14	64.67%
5013000	Supplies And Materials				
5013100	Administrative Supplies				
5013120	Office Supplies	3,688.79	30.00	(3,658.79)	12295.97%
5013130	Stationery and Forms	-	50.00	50.00	0.00%
	Total Administrative Supplies	3,688.79	80.00	(3,608.79)	4610.99%
5013300	Manufctrng and Merch Supplies				
5013350	Packaging & Shipping Supplies	-	25.00	25.00	0.00%
	Total Manufctrng and Merch Supplies	-	25.00	25.00	0.00%
5013600	Residential Supplies				
5013630	Food Service Supplies	-	50.00	50.00	0.00%
	Total Residential Supplies	-	50.00	50.00	0.00%
5013700	Specific Use Supplies				
5013730	Computer Operating Supplies	222.00	-	(222.00)	0.00%
5013740	Educational Supplies	-	50.00	50.00	0.00%
	Total Specific Use Supplies	222.00	50.00	(172.00)	444.00%
	Total Supplies And Materials	3,910.79	205.00	(3,705.79)	1907.70%
5015000	Continuous Charges				
5015300	Operating Lease Payments				
5015340	Equipment Rentals	469.84	900.00	430.16	52.20%
5015350	Building Rentals	16.08	-	(16.08)	0.00%
5015360	Land Rentals	-	40.00	40.00	0.00%

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Department 30900 - Board of Health Professions
For the Period Beginning July 1, 2017 and Ending January 31, 2018

Account		Amount			% of Budget
Number	Account Description	Amount	Budget	Under/(Over)	
5015390	Building Rentals - Non State	12,502.11	25,540.00	13,037.89	48.95%
	Total Operating Lease Payments	12,988.03	26,480.00	13,491.97	49.05%
	Total Continuous Charges	12,988.03	26,480.00	13,491.97	49.05%
5022000	Equipment				
5022100	Computer Hrdware & Sftware	-			
5022170	Other Computer Equipment	1,627.83	-	(1,627.83)	0.00%
	Total Computer Hrdware & Sftware	1,627.83	-	(1,627.83)	0.00%
5022200	Educational & Cultural Equip	-			
5022240	Reference Equipment	209.85	500.00	290.15	41.97%
	Total Educational & Cultural Equip	209.85	500.00	290.15	41.97%
5022300	Electrnc & Photographic Equip				
5022320	Photographic Equipment	-	108.00	108.00	0.00%
5022330	Voice & Data Transmissn Equip	-	100.00	100.00	0.00%
	Total Electrnc & Photographic Equip	-	208.00	208.00	0.00%
5022600	Office Equipment				
5022630	Office Incidentals	-	30.00	30.00	0.00%
	Total Office Equipment	-	30.00	30.00	0.00%
	Total Equipment	1,837.68	738.00	(1,099.68)	249.01%
	Total Expenditures	297,790.06	546,705.00	248,914.94	54.47%

Virginia Department of Health Professions

Sanctioning Reference Points (SRP) Agreement Analysis

Data through December 31, 2017

David E. Brown, D.C.
Director

Board	Start Date	Completed Worksheets	Agreement		Departures		Agreement by Board
			#	%	Aggravating #	Mitigating #	
Medicine	Aug-04	246	178	72%	10	58	72%
Nursing	Jul-05	1873	1485	79%	325	63	79%
CNA	Jul-05	1067	1024	96%	21	22	96%
RMA	Jun-13	74	56	76%	17	1	76%
Dentistry	Jun-06	238	179	75%	20	39	75%
Funeral Veterinary	May-07	44	36	82%	1	7	82%
Medicine	May-07	131	112	86%	14	5	86%
Pharmacy Pharmacy Technicians	Nov-07	113	80	71%	6	27	71%
Optometry	Jun-13	5	3	60%		2	60%
Social Work	Dec-08	17	14	82%	2	1	82%
Psychology	Jun-09	18	9	50%	3	6	50%
Counseling	Jun-09	11	9	82%		2	82%
Physical Therapy	Jun-09	26	24	92%	1	1	92%
Long-Term Care	Nov-09	11	9	82%	2		82%
Audiology	Mar-10	22	15	68%	2	5	68%
DHP Total	Jun-10	5	5	100%			100%
		3901	3238	83%	424	239	83%



COMMONWEALTH of VIRGINIA

David E. Brown, D.C.
Director

Department of Health Professions
Perimeter Center
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Henrico, Virginia 23233-1463

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TEL (804) 367-4400
FAX (804) 527-4475

February 15, 2018

T. Braxton McKee, Esquire
Kaufman & Canoles, P.C.
Post Office Box 626
Virginia Beach, VA 23451

RE: Procreate Fertility Center of Virginia, P.L.L.C.

Dear Mr. McKee:

Please find enclosed the recommendation of the agency subordinate of the Board of Health Professions ("Board") regarding the request for an advisory opinion for Procreate Fertility Center of Virginia, P.L.L.C. This recommendation, which was adopted by the Agency Subordinate on January 23, 2018, will be presented to the full Board at its February 27, 2018, meeting for ratification.

Please contact me should you have any questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Banning", written over a horizontal line.

James L. Banning, Director
Administrative Proceedings Division

cc: Elizabeth A. Carter, Ph.D. Executive Director for the Board of Health Professions
Charis A. Mitchell, Assistant Attorney General

SELF-REFERRAL ACT ADVISORY OPINION

RE: Application of Procreate Fertility Center of Virginia, PLLC

REQUEST

On November 17, 2017, Procreate Fertility Center of Virginia, PLLC, a Virginia professional limited liability company (the "Practice"), submitted an application for an advisory opinion to the Board of Health Professions ("Board"). The purpose of the application is to seek clarification of the definition of "referral" under the Virginia Practitioner Self-Referral Act ("Act"). The Practice, and its sole member, Christian Perez, M.D. ("Dr. Perez"), seeks to determine whether Dr. Perez and Ms. Duey, L.N.P. ("Providers"), by informing patients that Fertility Pharmacy of America, LP, a Tennessee limited partnership (the "Pharmacy"), is an option to fill fertility-related prescriptions, will qualify as a "referral" under the Act and violate Virginia Code § 54.1-2411, which prohibits referrals from a practitioner to another entity with whom the practitioner, or immediate family member, has an investment interest. Further, if it is determined that the Providers are making a referral, the Practice and Dr. Perez request that the Board make a determination whether the Practice is sufficiently involved in the ongoing care of the patients, as these prescriptions are being filled to meet the "office practice" exception of the Act. This opinion does not address Virginia Code § 54.1-2964, as it is outside the scope of the Board of Health Professions' Advisory Opinions on the Practitioner Self-Referral Act.

FACTS

Dr. Perez is a physician licensed by the Virginia Board of Medicine who specializes in treating patients with infertility issues through the Practice. Dr. Perez currently owns one

hundred percent of the membership interests in the Practice and currently practices medicine exclusively through the Practice. Ms. Duey is a Women's Health Nurse Practitioner licensed by the Virginia Boards of Nursing and Medicine who also specializes in treating patients with infertility issues. Although she works in the practice, she has no ownership or beneficial interest in it and will not receive any compensation based, directly or indirectly, on the volume or value of prescriptions written for the Practice's patients, whether or not such prescriptions are filled by the Pharmacy.

The Pharmacy is a specialized pharmacy dedicated to providing patients with fertility-related pharmaceutical products. No such pharmacies specializing in fertility-related pharmaceutical products are currently operating in Virginia. RX Partners, LLC, a Tennessee limited-liability company ("RX Partners"), owns a two percent partnership interest in the Pharmacy and serves as its general partner. The remaining ninety-eight percent of the partnership interests in the Pharmacy are owned by physicians, either in their individual capacities or through their medical practices (each, a "Pharmacy Partner" and collectively, the "Pharmacy Partners"). Each Pharmacy Partner is a limited partner of the Pharmacy and receives partnership distributions in proportion to his limited partnership interest in the Pharmacy. The Pharmacy has a brick and mortar presence in Nashville, Tennessee, and ships prescriptions all over the country, including filling prescriptions that are prescribed by Pharmacy Partners. The Pharmacy bills and collects payment for all inventory that it sells to patients and does not submit any claims to federal payors for reimbursement.

Dr. Perez desires to become a Pharmacy Partner by purchasing a limited partnership interest in the Pharmacy. Dr. Perez would fund the purchase of such interest in the

Pharmacy solely from his personal funds. The Practice would not have any financial relationship with, or ownership interest in, the Pharmacy.

In the course of providing infertility treatments to the Practice's patients, the Providers will prescribe certain fertility related medications or other pharmaceutical products, many of which are only readily and regularly available through specialized fertility pharmacies like the Pharmacy. The Providers will not direct or affirmatively send their patients to fill their prescriptions through the Pharmacy. Rather, they will provide their patients with a written list of pharmacies through which the prescription can be filled and such list will include the name of the Pharmacy as one of those options. Any effort by the Providers to provide patients with information about the Pharmacy will not outweigh efforts to provide information about other pharmacies, as all of the pharmacy options shared with patients will be included on a single list.

VIRGINIA PRACTITIONER SELF-REFERRAL ACT

Under the Act, a health care practitioner is prohibited from referring patients to an entity outside the referring practitioner's office or group practice if the practitioner, or an immediate family member, is an investor in such entity.

The following pertinent terms are defined by the Act:

"Investment interest" means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments, except investment interests in a hospital licensed pursuant to Article 1 (Section 32.1-123 et seq.) of Chapter 5 of Title 32.1.

"Investor" means an individual or entity directly or indirectly possessing a legal or beneficial ownership interest, including an investment interest.

"Practitioner" means any individual certified or licensed by any of the health regulatory boards within the Department of Health Professions, except individuals regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Referral" means to send or direct a patient for health services to another health care practitioner or entity outside the referring practitioner's group practice or office practice or to establish a plan of care which requires the provision of any health services outside the referring practitioner's group practice or office practice.

QUESTION

Do the proposed actions of the Providers meet the definition of "referral" under the Virginia Self-Referral Act if they recommend the Pharmacy for filling fertility-related prescriptions with a list of other pharmacies that may be used by the patients?

Dr. Perez will have an investment interest in the Pharmacy by purchasing a limited partnership interest in the Pharmacy. Since Dr. Perez will be an investor in the Pharmacy, it must be determined whether the Providers are making a referral under the Act. The Act defines "Referral" as a physician sending or directing a person to a particular physician or entity. Virginia Code § 54.1-2410. Merriam-Webster defines "send" as "to tell *or cause* (someone or something) to go to a place." Further, "direct" is defined as "*to cause* (someone or something) to turn, move, or point in a particular way" or "to cause (someone's attention, thoughts, emotions, etc.) to relate to a particular person, thing, goal, etc." Merriam-Webster Dictionary 1071(9th ed. 1991). The Act thus requires a practitioner to affirmatively send or direct a patient to a particular provider or entity in order to classify as a referral. Therefore, merely including the Pharmacy on a list with other pharmacy options does not meet the definition of a "referral" under the Act.

The application states that the Providers will not direct or affirmatively send their patients to fill their prescriptions through the Pharmacy. Rather, they will provide their patients with a written list of pharmacies through which the prescription can be filled, and such list will include the name of the Pharmacy as one of those options. Further, any effort by the Providers to provide patients with information about the Pharmacy will not outweigh

efforts to provide information about other pharmacies, as all of the pharmacy options shared with patients will be included on the same list. Informing patients that the Pharmacy is one pharmacy option among several pharmacies for filling fertility-related prescriptions does not meet the definition of a “referral.”

As long as the Providers provide patients with information about the Pharmacy as a pharmacy option in a way that does not outweigh efforts to provide information about other pharmacies, the actions of the Providers will not constitute a “referral” under the Act. Since the actions of the Providers do not constitute a referral under the Act, the Board will not address the issue related to the ongoing care of the patients while the prescriptions are being filled by the Pharmacy as it relates to the “office practice” exception. Further, as stated above, this opinion does not address the proposed disclosure under Virginia Code § 54.1-2964, as that is beyond the scope of the Board of Health Professions.

CONCLUSION

For the reasons set forth above, the agency subordinate, pursuant to 18 VAC 75-20-60(E), recommends the following disposition to the Board of Health Professions:

If the Providers follow the procedures stated in the application, as well as in this Opinion, the providers will not make a referral to the Pharmacy within the meaning of the Act.

Virginia Department of Health Professions

Patient Care Disciplinary Case Processing Times:

Quarterly Performance Measurement, Q2 2014 - Q2 2018

David E. Brown, D.C.
Director

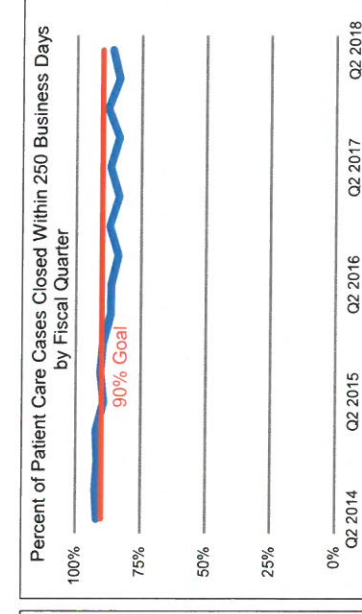
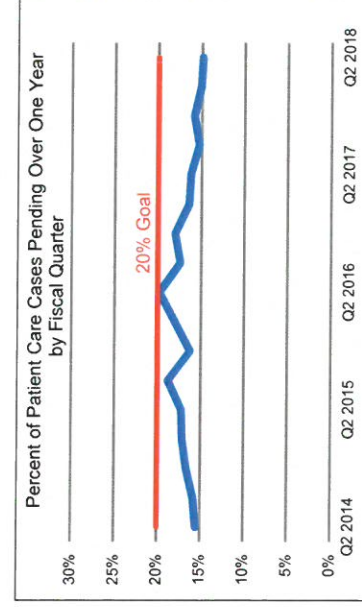
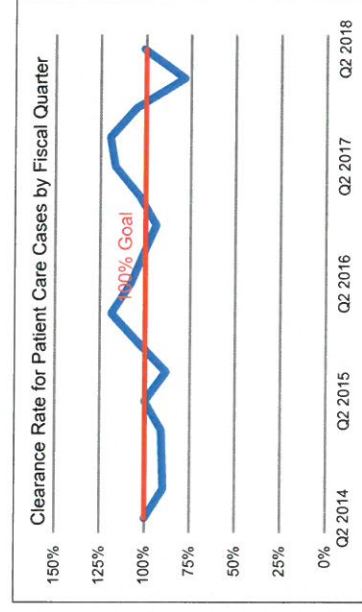
"To ensure safe and competent patient care by licensing health professionals, enforcing standards of practice, and providing information to health care practitioners and the public."
DHP Mission Statement

In order to uphold its mission relating to discipline, DHP continually assesses and reports on performance. Extensive trend information is provided on the DHP website, in biennial reports, and, most recently, on Virginia Performs through Key Performance Measures (KPMs). KPMs offer a concise, balanced, and data-based way to measure disciplinary case processing. These three measures, taken together, enable staff to identify and focus on areas of greatest importance in managing the disciplinary caseload: Clearance Rate, Age of Pending Caseload and Time to Disposition uphold the objectives of the DHP mission statement. The following pages show the KPMs by board, listed in order by caseload volume; volume is defined as the number of cases received during the previous 4 quarters. In addition, readers should be aware that vertical scales on the line charts change, both across boards and measures, in order to accommodate varying degrees of data fluctuation. This report includes the number of days the case was in the continuance activity.

Clearance Rate - the number of closed cases as a percentage of the number of received cases. A 100% clearance rate means that the agency is closing the same number of cases as it receives each quarter. DHP's goal is to maintain a 100% clearance rate of allegations of misconduct. The current quarter's clearance rate is **101%**, with **955** patient care cases received and **965** closed.

Age of Pending Caseload - the percent of open patient care cases over 250 business days old. This measure tracks the backlog of patient care cases older than 250 business days to aid management in providing specific closure targets. The goal is to maintain the percentage of open patient care cases older than 250 business days at no more than 20%. The current quarter shows **15%** patient care cases pending over 250 business days with **2689** patient care cases pending and **400** pending over 250 business days.

Time to Disposition - the percent of patient care cases closed within 250 business days for cases received within the preceding eight quarters. This moving eight-quarter window approach captures the vast majority of cases closed in a given quarter and effectively removes any undue influence of the oldest cases on the measure. The goal is to resolve 90% of patient care cases within 250 business days. The current quarter shows **86%** percent of patient care cases being resolved within 250 business days with **965** cases closed and **830** closed within 250 business days.



Submitted: 2/20/2018

DHP Performance Measures with Continuances

Prepared by: Department of Health Professions

Virginia Department of Health Professions - Patient Care Disciplinary Case Processing Times, by Board

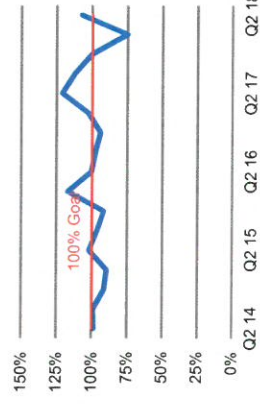
Clearance Rate

In order to uphold its mission relating to discipline, DHP continually assesses :

Nursing - In Q2 2018, the clearance rate was **108%**, the Pending Caseload older than 250 business days was **11%** and the percent closed within 250 business days was **80%**

Q1 2018 Caseloads:

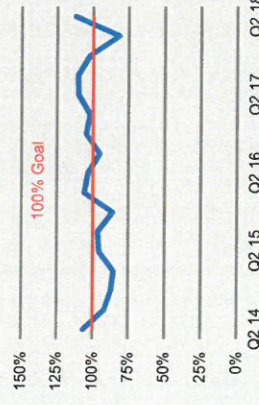
Received = **382** , Closed = **411**
Pending over 250 days = **143**
Closed within 250 days = **330**



Nurses - In Q2 2018, the clearance rate was **113%**, the Pending Caseload older than 250 business days was **13%** and the percent closed within 250 business days was **81%**.

Q1 2018 Caseloads:

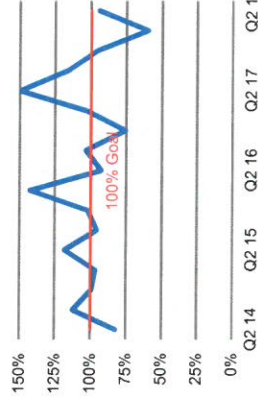
Received = **280** , Closed = **315**
Pending over 250 days = **120**
Closed within 250 days = **256**



CNA - In Q2 2018, the clearance rate was **94%**, the Pending Caseload older than 250 business days was **6%** and the percent closed within 250 business days was **77%**.

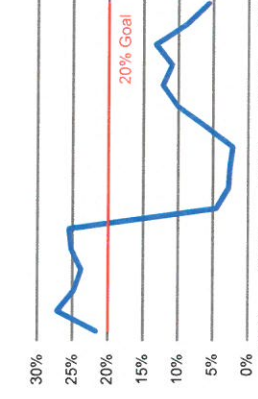
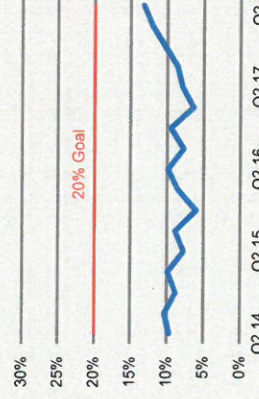
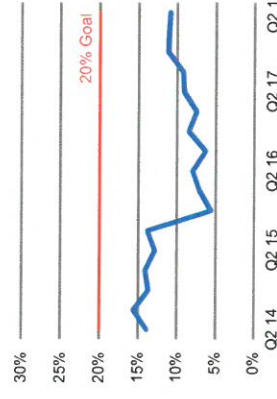
Q1 2018 Caseloads:

Received = **102** , Closed = **96**
Pending over 250 days = **23**
Closed within 250 days = **74**

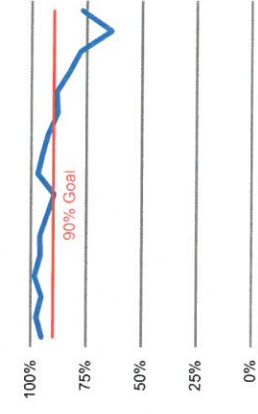
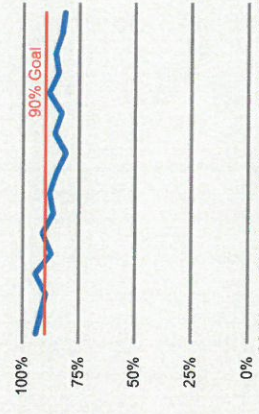
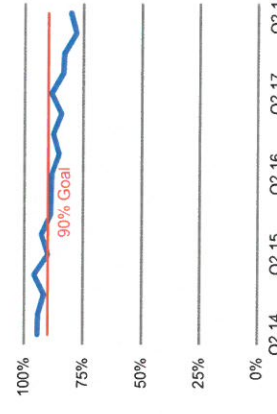


Age of Pending Caseload

(percent of cases pending over one year)



Percent Closed in 250 Business Days



Note: Vertical scales on line charts change, both across boards and measures, in order to accommodate varying degrees of data fluctuation.

Submitted: 2/20/2018

DHP Performance Measures with Continuances

Prepared by: Department of Health Professions

Virginia Department of Health Professions - Patient Care Disciplinary Case Processing Times, by Board

Clearance Rate

In order to uphold its mission relating to discipline, DHP continually assesses:

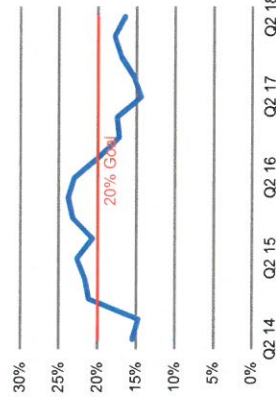
Medicine - In Q2 2018, the clearance rate was **98%**, the Pending Caseload older than 250 business days was **16%** and the percent closed within 250 business days was **94%**.

Q1 2018 Caseloads:

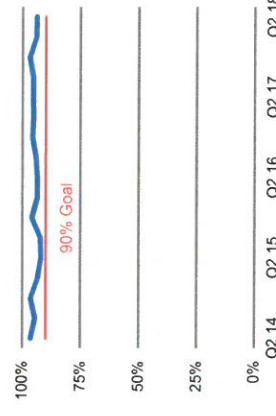
Received = **341**, Closed = **335**
 Pending over 250 days = **112**
 Closed within 250 days = **314**

Age of Pending Caseload

(percent of cases pending over one year)



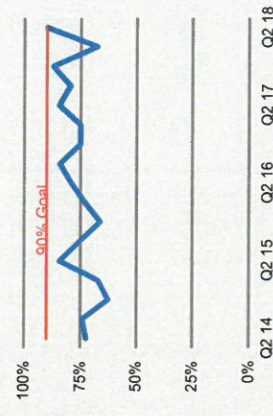
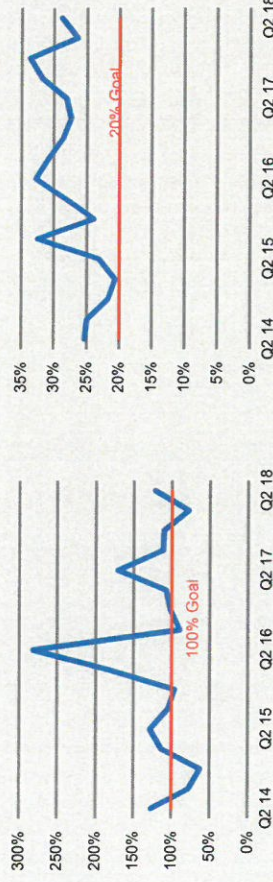
Percent Closed in 250 Business Days



Dentistry - In Q2 2018, the clearance rate was **122%**, the Pending Caseload older than 250 business days was **29%** and the percent closed within 250 business days was **90%**.

Q1 2018 Caseloads:

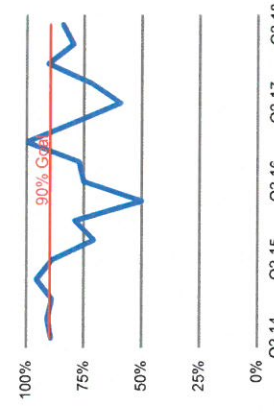
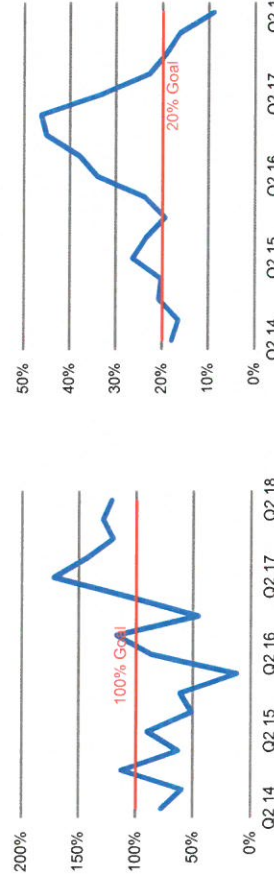
Received = **64**, Closed = **78**
 Pending over 250 days = **51**
 Closed within 250 days = **70**



Pharmacy - In Q2 2018, the clearance rate was **121%**, the Pending Caseload older than 250 business days was **9%** and the percent closed within 250 business days was **84%**.

Q1 2018 Caseloads:

Received = **42**, Closed = **51**
 Pending over 250 days = **9**
 Closed within 250 days = **43**



Note: Vertical scales on line charts change, both across boards and measures, in order to accommodate varying degrees of data fluctuation.

Virginia Department of Health Professions - Patient Care Disciplinary Case Processing Times, by Board

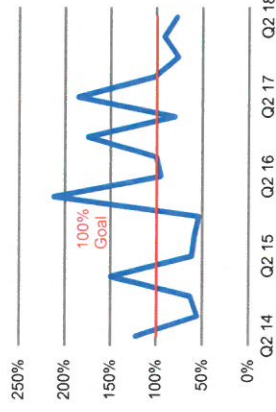
Clearance Rate

In order to uphold its mission relating to discipline, DHP continually assesses :

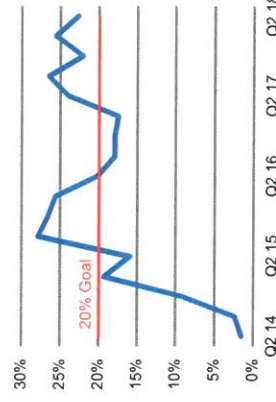
Veterinary Medicine - In Q2 2018, the clearance rate was **78%** the Pending Caseload older 250 business days was **23%** and the percent closed within 250 business days was **62%**.

Q1 2018 Caseloads:

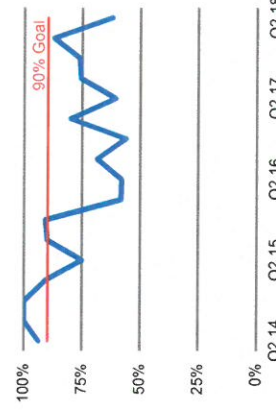
Received = **27** , Closed = **21**
Pending over 250 days = **32**
Closed within 250 days = **13**



Age of Pending Caseload (percent of cases pending over one year)



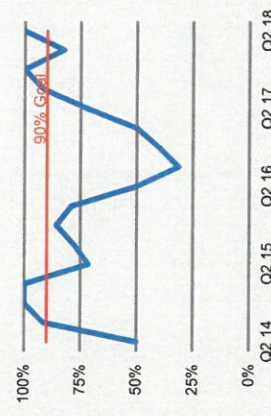
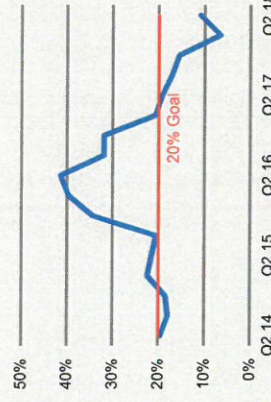
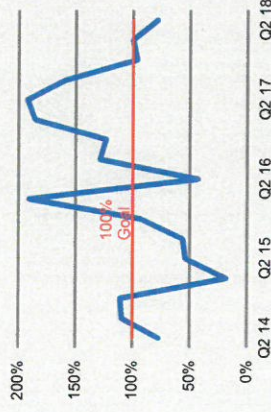
Percent Closed in 250 Business Days



Counseling - In Q2 2018, the clearance rate was **78%**, the Pending Caseload older than 250 business days was **11%** and the percent closed within 250 business days was **100%**.

Q1 2018 Caseloads:

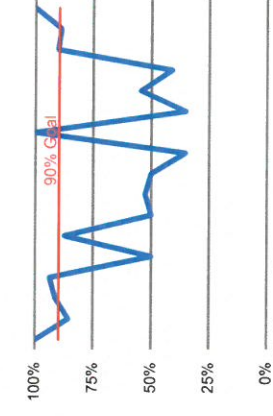
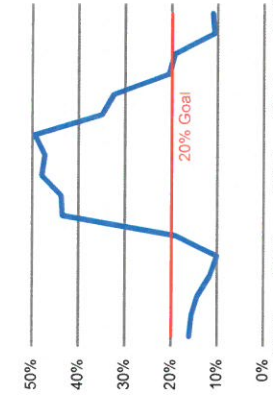
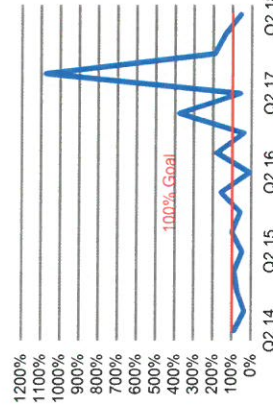
Received = **23** , Closed = **18**
Pending over 250 days = **6**
Closed within 250 days = **18**



Social Work - In Q2 2018, the clearance rate was **56%**, the Pending Caseload older than 250 business days was **11%** and the percent closed within 250 business days was **100%**.

Q1 2018 Caseloads:

Received = **18** , Closed = **10**
Pending over 250 days = **4**
Closed within 250 days = **10**



Note: Vertical scales on line charts change, both across boards and measures, in order to accommodate varying degrees of data fluctuation.

Virginia Department of Health Professions - Patient Care Disciplinary Case Processing Times, by Board

Clearance Rate

In order to uphold its mission relating to discipline, DHP continually assesses:

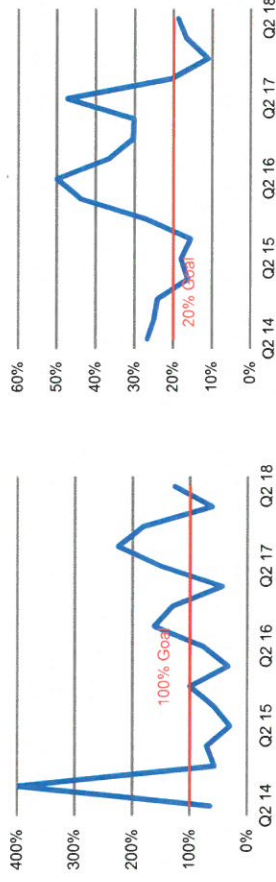
Psychology - In Q2 2018, the clearance rate was **127%**, the Pending Caseload older than 250 business days was **19%** and the percent closed within 250 business days was **79%**.

Q1 2018 Caseloads:

Received = **15**, Closed = **18**

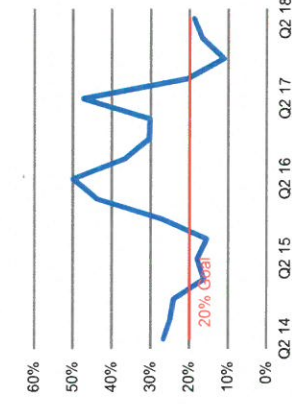
Pending over 250 days = **6**

Closed within 250 days = **15**

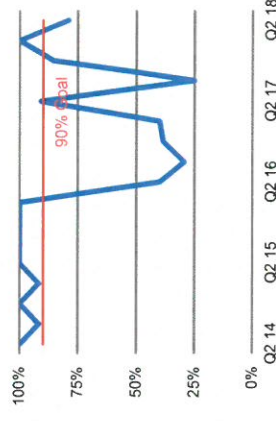


Age of Pending Caseload

(percent of cases pending over one year)



Percent Closed in 250 Business Days



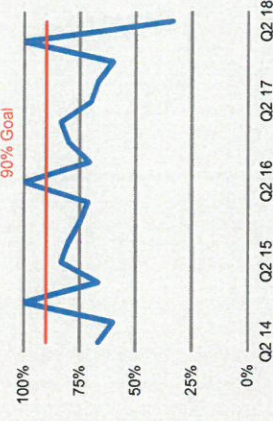
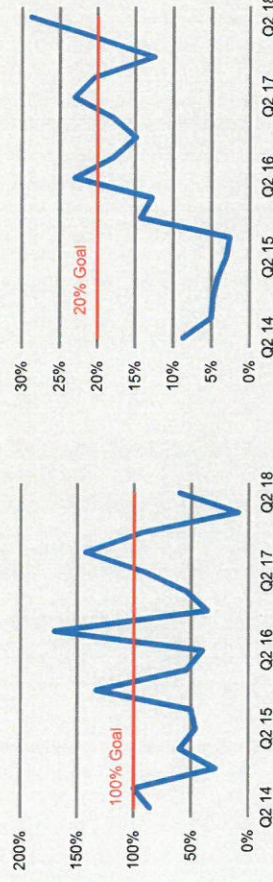
Long-Term Care - In Q2 2018, the clearance rate was **60%**, the Pending Caseload older than 250 business days was **29%** and the percent closed within 250 business days was **33%**.

Q1 2018 Caseloads:

Received = **10**, Closed = **6**

Pending over 250 days = **19**

Closed within 250 days = **2**



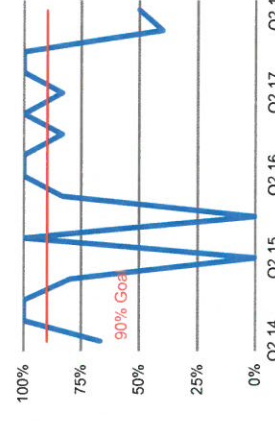
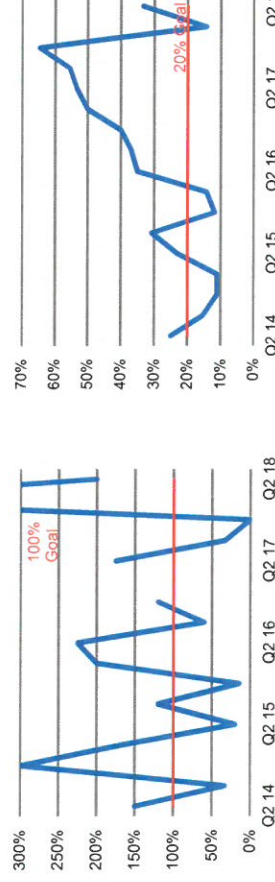
Optometry - In Q2 2018, the clearance rate was **200%**, the Pending Caseload older than 250 business days was **33%** and the percent closed within 250 business days was **50%**.

Q1 2018 Caseloads:

Received = **1**, Closed = **2**

Pending over 250 days = **2**

Closed within 250 days = **1**



Note: Vertical scales on line charts change, both across boards and measures, in order to accommodate varying degrees of data fluctuation.

Submitted: 2/20/2018

DHP Performance Measures with Continuances

Prepared by: Department of Health Professions

Virginia Department of Health Professions - Patient Care Disciplinary Case Processing Times, by Board

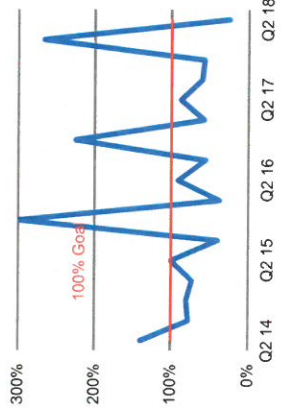
Clearance Rate

In order to uphold its mission relating to discipline, DHP continually assesses:

Physical Therapy - In Q2 2018, the clearance rate was **25%**, the Pending Caseload older than 250 business days was **35%** and the percent closed within 250 business days was **100%**.

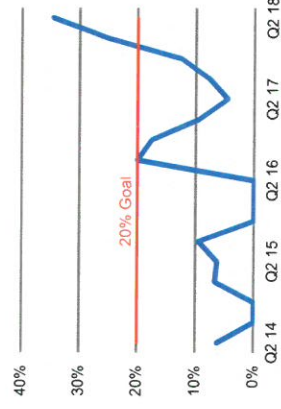
Q1 2018 Caseloads:

Received = **8**, Closed = **2**
Pending over 250 days = **9**
Closed within 250 days = **2**

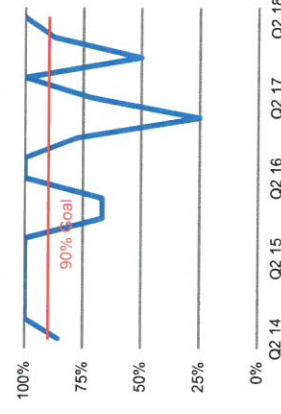


Age of Pending Caseload

(percent of cases pending over one year)



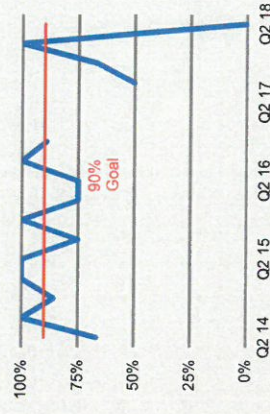
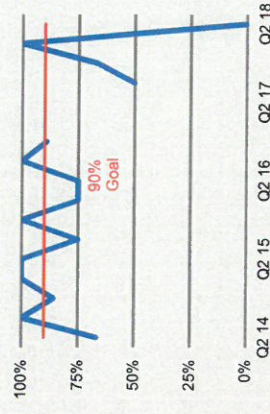
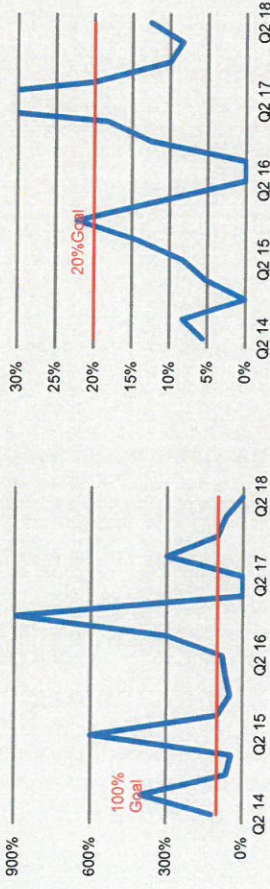
Percent Closed in 250 Business Days



Funeral - In Q2 2018, the clearance rate was **0%**, the Pending Caseload older than 250 business days was **13%** and the percent closed within 250 business was **N/A**.

Q1 2018 Caseloads:

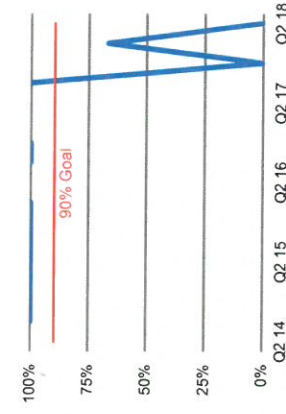
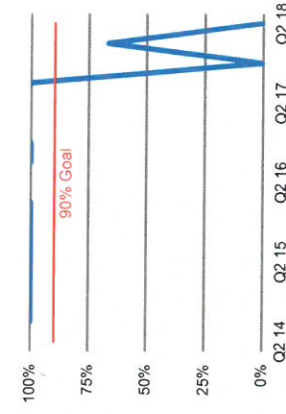
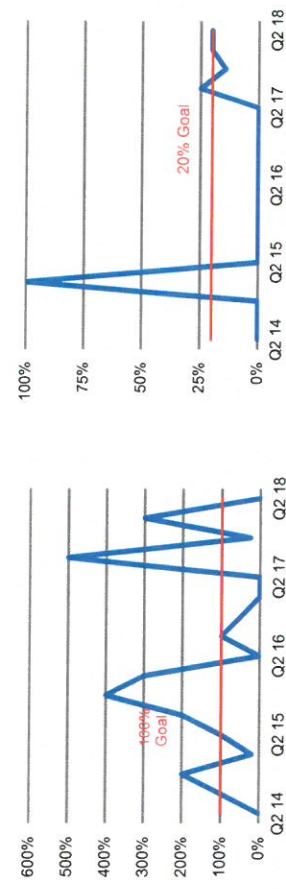
Received = **4**, Closed = **0**
Pending over 250 days = **2**
Closed within 250 days = **0**



Audiology - In Q2 2018, the clearance rate was **0%**, the Pending Caseload older than 250 business days was **20%** and the percent closed within 250 business days was **N/A**.

Q1 2018 Caseloads:

Received = **4**, Closed = **0**
Pending over 250 days = **2**
Closed within 250 days = **0**



Note: Vertical scales on line charts change, both across boards and measures, in order to accommodate varying degrees of data fluctuation.

Submitted: 2/20/2018

DHP Performance Measures with Continuances

Prepared by: Department of Health Professions